

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

JOHN DOE,

Plaintiff,

V.

**VIRGINIA POLYTECHNIC
INSTITUTE AND STATE
UNIVERSITY, et al.,**

Defendants.

Civil Action No. 7:21-cv-00378

**MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY
IN OPPOSITION TO MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)**

COMES NOW the Plaintiff, John Doe (“Plaintiff” or “Mr. Doe”), and respectfully requests leave of the Court to file a brief Notice of Supplemental Authority in Opposition to Defendants’ Motion to Dismiss Pursuant to Rule 12(b)(6). In support of this request, Plaintiff states as follows:

1. On September 27, 2023, Defendants filed a Motion to Dismiss Pursuant to Rule 12(b)(6). On October 11, 2023, Plaintiff filed a Memorandum in Opposition thereto. On October 18, 2023, Defendants filed their reply brief. The Motion is set for oral argument on January 12, 2024, at 2:00 p.m.
2. On November 20, 2023, after the parties' briefing on Defendants' Motion to Dismiss concluded, the Honorable Elizabeth K. Dillon issued an opinion in Ortegel v. Va. Polytechnic Inst., Civil Action No. 7:22-cv-00510, 2023 U.S. Dist. LEXIS 207568 (W.D. Va. Nov. 20, 2023).
3. Aside from involving the same defendant, Ortegel is germane to the issues raised by Defendants' Motion to Dismiss in this action, specifically Defendants' contention that Plaintiff has not alleged a cognizable property interest sufficient to trigger the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

2. On November 20, 2023, after the parties' briefing on Defendants' Motion to Dismiss concluded, the Honorable Elizabeth K. Dillon issued an opinion in Ortegel v. Va. Polytechnic Inst., Civil Action No. 7:22-cv-00510, 2023 U.S. Dist. LEXIS 207568 (W.D. Va. Nov. 20, 2023).

3. Aside from involving the same defendant, Ortegel is germane to the issues raised by Defendants' Motion to Dismiss in this action, specifically Defendants' contention that Plaintiff has not alleged a cognizable property interest sufficient to trigger the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

4. Accordingly, Plaintiff wishes to file a brief Notice of Supplemental Authority to address the holding of Ortegel with respect to Plaintiff's claim that his rights to due process were violated by Defendants, which will aid the Court in considering Defendants' Motion to Dismiss and Plaintiff's opposition thereto.
5. The Local Rules for the Western District of Virginia provide no particular procedures by which a party may draw the Court's attention to supplemental authority. Courts within the District generally permit parties to file motions for leave to file such supplemental authority where relevant. See, e.g., Rios v. Jenkins, 390 F. Supp. 3d 714, 719 n.2 (W.D. Va. 2019) (granting leave to submit supplemental authority); Miller v. Mediko, Inc., Civil Action No. 5:20-cv-00003, 2022 U.S. Dist. LEXIS 60017, at *1 n.1 (W.D. Va. Mar. 31, 2022) (same).
6. Adhering to the general practice of this District would be consistent with this Court's Scheduling Order (ECF No. 73), which requires prior leave of court before a party may file a surreply brief.

WHEREFORE, Plaintiff respectfully requests leave to file his Notice of Supplemental Authority in Opposition to Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6), which is attached hereto as Exhibit 1.

Respectfully submitted,

John Doe

By: /s/ Daniel J. Martin
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

By: /s/ Daniel J. Martin
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